IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 2205 of 2005(K)

OS.305/2002 of MUNSIFF'S COURT, PAYYANNUR

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PETITIONER:

PADENEYIL JANAKI,
AGED 50 YEARS, W/O.LATE KUNHIRAMAN,
PADENIYIL, MAILANCHERRY, KUTTOOR AMSOM DESOM,
TALIPARAMBA TALUK.

BY ADV. SRI.M.V.AMARESAN
SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS:

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1. PALAKKEL PARU D/O. PALAKEEL CHIRUTHAI,
KUZHIKKAT, KUTTOOR AMSOM DESOM,
P.O.KUTTOOR, TALIPARAMBA TALUK.

2. PALAKKEL VIJAYAN, S/O. P.PARU,
KUZHIKKAT, KUTTOOR AMSOM DESOM, P.O.KUTTOOR.

3. PALAKKEL YESODA
D/O. P.P.CHIRTHAI, KUZHIKKAT, KUTTOOR AMSOM,
P.O.KUTTOOR, TALIPARAMBA TALUK.

BY ADV. SRI.M.SASINDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF AFFIDAVIT FILED BY PETR. BEFORE THE MUNSIFF'S COURT, PAYYANNUR IN O.S.305/02 SEEKING AMENDMENT OF PLAINT, DT.10.1.05

EXT.P2 – TRUE COPY OF COUNTER FILED BY RESPONDENTS, DATED 11.1.05.

EXT.P3 – TRUE TYPED COPY OF ORDER IN I.A.121/05 DT.17.1.05.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.2205 OF 2005

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DATED THIS THE 8TH JUNE, 2007

J U D G M E N T

Ext.P3 order passed by the learned Munsiff dismissing an application for amendment of the plaint filed under Order VI Rule 17 C.P.C. is under challenge by the plaintiff in this proceeding under Article 227 of the Constitution of India. In a suit for injunction, the plaintiff had pleaded that on the western side of the plaint schedule property is situated property belonging to one P.Balakrishnan @ Krishnan and one Umbrandi Madhavi. In para.5 of the plaint, it was also pleaded that there are clear demarcating boundaries on all four sides of the plaint schedule property in the form of mud ridges. Ext.P1 was the second successive amendment application filed by the petitioner after the advocate commissioner filed report in the case. The amendments sought for through Ext.P1 were, deletion of the words "Umbrandi Madhavi" in the western boundary description of the plaint schedule property and deletion of the words "mud ridges" in para.5. The learned Munsiff dismissed both the prayers on the ground that it is difficult to believe the version of the plaintiff that the mentioning of Umbrandi Madhavi's name also in the boundary column of the plaint schedule was a mistake. The learned Munsiff also noticed

that no clarification was made by the plaintiff in that regard even during her re-examination as PW.1. This is, according to the Munsiff, an aspect which should have been verified by the plaintiff at the time when the previous amendment application was filed. As regards the second amendment sought for, the learned Munsiff has found in more stronger words that the object of the said amendment is to get away from the impact of the defence contentions and PW.1's own admissions in the witness box.

2. Heard both sides.

3. Having considered the rival submissions, I am of the view that the application for amendment to the extent it sought deletion of the name of Umbrandi Madhavi from the western boundary column of the plaint schedule could have been allowed by the learned Munsiff by imposing some terms on the plaintiff, since it is true that there was lack of promptness on her part. But as regards the refusal of the other amendment sought, i.e., for deleting the words "mud ridges", the learned Munsiff's reasoning is correct and I also find that allowing that amendment will work out prejudice to the defendants.

Under the above circumstances, the Writ Petition is allowed in part. Ext.P1 I.A. will stand allowed to the limited extent of permitting

deletion of the words "Umbrandi Madhavi" after the words "property in the possession of" appearing in the western boundary column of the plaint schedule property, on condition that the petitioner pays a sum of Rs.500/- to the contesting respondents either directly or through their counsel in this Court within three weeks from today. But Ext.P3 order denying the prayer for deletion of the words "mud ridges" in para.5 will stand confirmed. If payment of costs as ordered above is not made within the stipulated time, Ext.P3 will stand confirmed in full.

(PIUS C.KURIAKOSE, JUDGE)

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